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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re C.P., A Person Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JON P., Defendant and Appellant.	B250852 (Los Angeles County Super. Ct. No. CK93614)

APPEAL from an order of the Superior Court of Los Angeles County, Carlos Vasquez, Judge. Affirmed.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Office of the County Counsel, James M. Owens, Assistant County Counsel and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Jon P. (Father), father of C.P. (C.), appeals the order terminating his family reunification services, asserting substantial evidence does not support that reasonable services were offered and that the juvenile court did not apply the correct evidentiary standard in making its determination. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Department of Children and Family Services (DCFS) in March 2012 after it received reports of the physical and emotional abuse and general neglect of C., then barely two years old. Family members believed Mother was using methamphetamine, and that she was suicidal and otherwise emotionally unstable. There were also reports that Mother was living with a drug-dealer and convicted felon and allegations of domestic violence between Mother and Father.[1] DCFS attempted to provide voluntary family maintenance services to Mother and C., but Mother missed multiple drug tests and according to reports from relatives, bought synthetic urine in order to pass the single test she completed.

In May 2012, C. was detained and placed with her maternal grandmother. The amended petition, filed in June 2012, alleged under Welfare and Institutions Code section 300, subdivision (b) that both parents had unresolved histories of

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[1] Mother and Father subsequently confirmed that domestic violence occurred and reported that C. had once been accidentally hit with a torque wrench while they were fighting. Mother and Father had separated in mid-2011 and were not living together at the time of the detention. The reports stated that Father's two older girls had been removed from his custody. Father admitted there had been domestic violence between him and the girls' mother.

substance abuse and had exposed C. to domestic violence, which rendered them unable to care for and protect the child.[2]

Interviewed for the June 2012 jurisdictional/dispositional report, Father admitted that in the past, both he and Mother had been daily users of methamphetamine, that Mother continued to use methamphetamine, and that he himself had a 25-year history of methamphetamine use.[3] Father stated he did not have a place for C. to live and was content to have her remain with her maternal grandmother. Father did not contact the caseworker to set up visitation. On June 8, Father was arrested for spousal abuse, having allegedly chased Mother with a baseball bat and beaten her dog.

Just prior to the jurisdictional/dispositional hearing, DCFS assembled a Multidisciplinary Assessment Team (MAT) to meet with Mother and Father and prepare a MAT assessment. Mother reported she had been living with a man who physically abused her and admitted her environment was not safe and healthy for C. Father stated that when he left, he realized the situation with Mother was dangerous for C., but rationalized leaving the girl there because "she was with [the maternal grandmother] for most of the time anyway."[4] He said he could not take

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[2] The amended petition also contained an allegation that C. suffered from an ear infection for which Mother had neglected to obtain medical treatment. Although that allegation was ultimately dismissed, the evidence was undisputed that at the time the maternal grandmother obtained custody, C. had a punctured eardrum from a serious ear infection that placed her hearing at risk. Undesignated statutory references are to the Welfare and Institutions Code.

[3] Father had told the maternal grandmother in April that he had "great fear that [C.] [was] in danger" because Mother had been using drugs for months and was hanging around drug users and drug dealers, who were involved in various types of criminal behavior. He told the grandmother he had withheld this information from DCFS because he still loved Mother and wanted the family unit to get back together.

[4] The maternal grandmother reported she took the girl into her home as often as she could, but that Mother frequently refused to let her see C.

custody because his living situation was unstable. At the time, Father was participating in domestic violence classes as a result of the June arrest for domestic violence. In the past, he had begun, but not completed, a drug rehabilitation program. The assessment team recommended that Father continue to participate in domestic violence and substance abuse classes, that he begin participating in parenting education classes, random drug testing, and individual counseling, and that he commence regular visitation.[5] The report listed specific referrals provided to Father for domestic violence counseling, individual counseling, and parenting classes.

At the July 25, 2012 jurisdictional/dispositional hearing, the court found the allegations of the amended petition true with respect to the parents' drug use and domestic violence, and ordered reunification services for both parents. Father was instructed to take a parenting class, participate in drug counseling and testing, and undergo counseling to address domestic violence, drug use, and other case issues. Mother was required to participate in a similar program of services.

On September 4, 2012, the caseworker sent Father a letter listing the programs required by the dispositional order and asking him to contact her. The caseworker met with Father on September 20, 2012 to discuss how she could assist him to comply with the court-ordered services. This followed an earlier, unsuccessful attempt to meet with Father. Father stated he was not in a position to comply with the court's orders or meet further with the caseworker, stating he had an out-of-town job lined up. He further stated he was not "mentally and

[5] Father refused to have visits with C. at DCFS's offices, where Mother's visits were occurring, which resulted in him having had no recent visits.

emotionally" in the right frame of mind to visit C. and believed continued placement with the grandmother was in the girl's best interest.[6]

In January 2013, the caseworker reported that Mother was enrolled in a residential drug counseling program and was visiting C. regularly. The caseworker recommended that unmonitored visitation begin at Mother's treatment program. The report indicated the caseworker had contacted Father several times telephonically and that he had used profanity and was disrespectful and uncooperative. She received no information indicating compliance with any aspect of the reunification plan other than the domestic violence program.[7] Father had visited C. only twice. The caseworker expressed concern that Father was relying on Mother to comply with her reunification plan and intended to move back in with Mother and C. once Mother regained custody. At the January 2013 six-month review hearing, the court found that Father's progress had been "minimal."[8]

The May 2013 status review report documented no recent contact between the caseworker and Father. The caseworker learned that in March, Father had been arrested for battery on a 12-year old boy, the son of a roommate with whom Father had quarreled. The report stated that Father had visited C. sporadically. On May 23, 2013, the court set the matter for a contested hearing to consider termination of

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[6] Mother was equally noncompliant until she was arrested for drug possession in October 2012. She agreed at that point to go into a drug program to avoid jail time.

[7] Father provided information about the domestic violence program to a different DCFS staff member, as he avoided communication with the assigned caseworker. The caseworker contacted the domestic violence counselor, who reported that Father had been attending sessions regularly and addressing his "negative thoughts and feelings" for women, which Father blamed on "unfaithful wives" and a "non-accepting father."

[8] Father did not appear at that hearing.

Father's reunification services and requested updated information on Father's progress.[9]

The caseworker contacted Father in July 2013 and learned that he had not visited C. recently, claiming that he had been "very busy with work" and was out of town. Father presented confirmation that he had completed the domestic violence program, but reported no progress in any other aspect of the reunification plan.

At the contested 12-month review hearing on July 19, 2013, Father recalled visiting with C. two months earlier, but could not remember when any visits prior to that had occurred. Counsel contended that Father should be excused for failing to visit because he worked during the week in Boron and that he also worked when he was in town on the weekends. Father's counsel further claimed that reunification services had been inadequate because the caseworker had met with Father only once, on September 20, 2012, and provided Father no referrals for services at that time. Counsel for C. and counsel for DCFS urged the court to terminate reunification services for Father. The court found that reasonable services had been provided, but that Father had not made significant progress in resolving the problems that led to the child's removal from the home, and that he had not demonstrated the capacity and ability to complete the objectives of the treatment plan and provide for C.'s safety, protection, and physical and emotional well-being. The court further found that Father had not consistently and regularly contacted and visited C. Based on those findings, the court terminated Father's reunification services. Father appealed.

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[9] Father was not present at the May hearing. At the hearing, the court granted Mother, who had progressed to unmonitored overnight visitation, six additional months of reunification services.

DISCUSSION

Section 361.5, subdivision (a)(1)(B) provides that generally, for children under the age of three on the date of the initial removal, "court-ordered services shall be provided for a period of six months from the dispositional hearing . . . but no longer than 12 months from the date the child entered foster care . . . ."[10] For C., that period would have expired in May 2013, 12 months after she was detained and placed with her maternal grandmother.

Section 366.21, subdivisions (f) and (g) govern proceedings at the 12-month review hearing. Subdivision (f) provides that the court shall determine the permanent plan for the child and shall order the return of the child to the physical custody of his or her parent at the hearing, unless it finds that the return would create a substantial risk of detriment to the child. The failure of the parent "to participate regularly and make substantive progress in court-ordered treatment programs" is "prima facie evidence that return would be detrimental." (§ 366.21, subd. (e).) The court is also required by subdivision (f) to determine "whether reasonable services that were designed to aid the parent . . . to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent . . . ." Subdivision (g) similarly provides that if the child has not been returned to the custody of the parent by the time the applicable period set forth in section 361.5, subdivision (a)(1) has expired, the court shall "[c]ontinue the case for up to six months for a permanency review

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[10] Subdivision (a)(3) of section 361.5 provides an exception permitting services to be extended up to a maximum period of 18 months "if it can be shown, at the [12-month review hearing], . . . that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period." Subdivision (a)(3) further provides: "The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent . . . within the extended time period or that reasonable services have not been provided to the parent . . . ."

hearing" if it finds that "there is a substantial probability that the child will be returned to the physical custody of his or her parent . . . and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent . . . ." Subdivision (g) also provides: "The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent . . . ." (§ 366.21, subd. (g)(1)(C).)

Father does not contend that he was in substantial compliance with the case plan or that there was a substantial probability that C. would be returned to his custody within six months.[11] Instead, he contends the evidence does not support that he received reasonable reunification services in the preceding period and that the court was, therefore, required to continue his services for an additional six months. (See *In re Heather B.* (1992) 9 Cal.App.4th 535, 545 ["[I]f [the court] does not find clear and convincing evidence that reasonable services were provided [at the time of the 12-month review hearing], then the court must continue the case for up to six months."].) Father further contends that the court made the finding that he received reasonable services under an improper standard, viz., a preponderance of the evidence, rather than the clear and convincing evidence standard. For the reasons discussed, we disagree.

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[11] In order to find a substantial probability that the child will be returned to the physical custody of his or her parent and safely maintained in the home within the extended period of time, the court is required to find all of the following: "(A) That the parent . . . has consistently and regularly contacted and visited with the child. [¶] (B) That the parent . . . has made significant progress in resolving problems that led to the child's removal from the home. [¶] (C) The parent . . . has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1)(A)(B)(C).)

A. *Substantial Evidence*

The reunification plan "must be specifically tailored to fit the circumstances of each family [citation], and must be designed to eliminate those conditions which led to the juvenile court's jurisdictional finding. [Citation.]" (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) Once the court orders a reunification plan, DCFS must "make a good faith effort to develop and implement [it]. [Citation.]" (*Armando L. v. Superior Court* (1995) 36 Cal.App.4th 549, 554.) The caseworker should offer services designed to remedy the problems, maintain reasonable contact with the parents, and make "'reasonable efforts to assist the parents in areas where compliance prove[s] difficult . . . .' [Citation.]" (*Id.*, at pp. 554-555, quoting *In re Riva M.* (1991) 235 Cal.App.3d 403, 414, italics deleted.)

Once a parent is informed of the proceedings and the requirements of the court-ordered plan, "it [is] the obligation of the parent to communicate with the Department and participate in the reunification process." (*In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.) The agency is not required to "'take the parent by the hand and escort him or her through classes or counseling sessions.'" (*In re Christina L.* (1992) 3 Cal.App.4th 404, 414.) "It is [] well established that 'reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent. [Citation.]'" (*Ibid.*, quoting *In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.) We review the juvenile court's finding that a parent was provided reasonable reunification services under the substantial evidence standard. (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080.)

Father contends the caseworker did not maintain reasonable contact with him and that he was not provided adequate referrals. The record establishes that DCFS was in communication with Father multiple times in the period between the detention in May 2012 and the jurisdictional hearing in July 2012. This included assembling a multidisciplinary team, who assessed the family and provided a list of

the specific services Father needed in order to reunify with C. and a list of agencies that provided such services. From the beginning, Father indicated no interest in having custody of C. or visiting more than occasionally.[12] After the court issued its dispositional order, which encapsulated the recommendations of DCFS and the MAT assessment, the caseworker sent Father a letter reiterating that he needed to participate in individual counseling, parenting classes, a drug program and counseling, and random drug tests. In addition, she met personally with Father on September 20 to provide further assistance. Father stated he had no interest in complying with the reunification plan and that he was content to leave C. with her grandmother. He also stated he did not wish to avail himself of the monitored visitation offered by DCFS because he was not "mentally and emotionally" in the right frame of mind. The January 2013 report indicated the caseworker attempted to contact Father again and was met with profanity and disrespect. Father did not appear at the January 2013 six-month review hearing or on the date the 12-month review hearing was originally set, in May 2013. The caseworker contacted Father again in July 2013, prior to the continued hearing, at which time she was told Father had been "too busy" to even visit C. The only portion of the plan Father undertook in the preceding year was the 52-week domestic violence program. However, he enrolled in the program to avoid criminal penalties, not in order to reunify with C. In sum, DCFS provided Father the information he needed to make progress in the programs required by the court, and the caseworker made every reasonable effort to remain in contact with and to assist him. Father not only failed to avail himself of the requisite services and opportunities for visitation, but affirmatively and repeatedly informed the caseworker he had no intention of doing

[12] We note that prior to DCFS's intervention, Father had already essentially abandoned the child for almost a year, allowing her to live with a drug-addicted Mother and various companions in a situation he admitted was "dangerous."

so. Under these circumstances, the court's finding that DCFS provided reasonable services was supported by substantial evidence.

B. *Burden of Proof*

A determination that reasonable services were provided a parent made at the 12-month review hearing must be made by clear and convincing evidence. (§366.21, subd. (g)(1)(C); *In re Heather B.*, *supra*, 9 Cal.App.4th at p. 545; *Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594; *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 794; *In re Alvin R.* (2003) 108 Cal.App.4th 962, 971; *Armando D. v. Superior Court* (1999) 71 Cal.App.4th 1011, 1025; *In re Monica C.* (1994) 31 Cal.App.4th 296, 306.) Father contends the matter must be remanded because the court failed to specify either in its order or on the record that it made the finding under a clear and convincing standard. Because the court is presumed to follow the law, mere silence -- failure to state expressly the standard applied -- does not demonstrate that the court applied the wrong standard. It is presumed the court applied the correct standard, absent "a record [that] affirmatively demonstrates error," particularly where, as here, the appealing party failed to seek clarification below. (*Armando D. v. Superior Court*, *supra*, 71 Cal.App.4th at p. 1025.) Moreover, any error was harmless, as the evidence here was undisputed that Father was provided the information and assistance he needed to make progress toward reunification but deliberately chose not to participate.

DISPOSITION

The order terminating parental rights is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

EDMON, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.